

**50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the San Mateo Thornmint (*Acanthomintha Obovata* ssp. *Duttonii*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service proposes to determine the San Mateo thornmint to be an endangered

species. This action is being taken because scattered populations of this annual plant have evidently been destroyed by urban development, road construction, and other land development activities within its historic range. At present, only one small population is known to remain. This consisted of 2,000-3,000 individuals in the spring of 1980 (Lindenmeyer, 1980), in central San Mateo County near the town of Redwood City, California. The proposed rule, if made final, would implement the protection provided by the Endangered Species Act of 1973, as amended (the Act). The Service is now

soliciting comments and other materials related to this proposal.

**DATES:** Comments from the public and interested State or county agencies must be received by August 17, 1984. Public hearing requests must be received by August 2, 1984.

**ADDRESSES:** Comments and related materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, OR 97232. Comments and materials received will be available for public inspection by appointment during normal business

hours (7:45 a.m.-4:15 p.m.) in the Service's Regional Office, at the same address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sanford R. Wilbur, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, OR 97232 (503/231-6131; FTS 429-6131), or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

**SUPPLEMENTARY INFORMATION:**

#### Background

The San Mateo thornmint, an annual member of the mint family, was first collected in 1900 by H. A. Dutton and was described as a subspecies of *Acanthomintha obovata* by Leroy Abrams (1951) in his *Illustrated Flora of the Pacific States*. Historically, this subspecies grew on grassy serpentine hillsides in locations scattered throughout San Mateo County, California, from Crystal Springs Reservoir to Woodside. The plant is now known from only one small population on the Edgewood County Park near Redwood City, California. This population grows on a grassy slope on soils derived from serpentine rock. Although Edgewood Park is now owned by San Mateo County, the thornmint is being adversely affected by unauthorized and uncontrolled recreational activities such as habitat disturbance by off-road vehicles (ORVs) and trampling by horses and people. During the spring of 1983, a patch of soil containing individuals of the thornmint was dug up and removed in an apparent attempt at transplant. Uses being considered for the park are day camps, picnic areas, trails, and a golf course. All of the uses being considered have the potential to affect the thornmint population by reducing the extent of undeveloped land and thus increasing the intensity of ORV use on what remains.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report to Congress on those native U.S. plants considered to be endangered, threatened, or extinct. This report (House Document No. 94-51), which included the San Mateo thornmint, was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service published a notice in the *Federal Register* (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) of the Act (acceptance of petitions is now governed by section 4(b)(3) of the Act). On June 16, 1976, the Service published

a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species, including the San Mateo thornmint, to be endangered species pursuant to the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the *Federal Register* (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not then been made final, along with four other proposals that had expired.

The Service now has adequate biological information to warrant reproposing the San Mateo thornmint, including recent survey reports. Additional information received during the comment period for this proposal will be considered in reaching a decision on whether to issue a final rule.

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments) set forth the procedures for adding species to the list of Endangered and Threatened Plants in 50 CFR 17.12. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act.

The factors and their application to *Acanthomintha obovata* Jepson ssp. *duttonii* Abrams (San Mateo thornmint) are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.** The San Mateo thornmint historically was found at scattered locations in San Mateo County, California, from Crystal Springs Reservoir in the north to Woodside in the south. Most of these sites have been destroyed, presumably by urban development, highway and road construction, and similar land-use alterations. The only known remaining colony is at Edgewood Park.

The possibility that additional colonies may exist on the Crystal Springs Reserve property has been mentioned by Dr. J. H. Thomas of Stanford University (pers. comm.), but none have been located recently.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** During the spring of 1983, a patch of soil containing individuals of the thornmint was removed from the Edgewood Park location. It is not known who removed the soil and plants or for

what purpose they were removed. Because soil was removed along with the plants, it is thought that there may have been an attempt at transplantation. Such removal from this small and localized population may contribute to its decline.

**C. Disease or predation.** Mortalities from disease or predation have not been reported in the literature. However, now that the subspecies is apparently confined to one small population, any threat of disease or predation would be extremely acute.

**D. The inadequacy of existing regulatory mechanisms.** The thornmint is listed as endangered by the State of California. However, State law principally addresses salvage of plants when there is a change in land use and restrictions on trade, and thus does to provide sufficient protection to ensure survival of the species in its natural habitat. Federal listing would provide additional protection for the species.

**E. Other natural or manmade factors affecting its continued existence.** Unauthorized activities such as trash dumping and ORV use are affecting the population and its habitat even though the thornmint population grows on property now owned by San Mateo County. Trampling by pedestrian and horse back traffic is also having an adverse impact on the thornmint.

#### Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is listed as endangered or threatened. Designation of critical habitat is not being proposed for the San Mateo thornmint because of the threat to this taxon posed by the explained removal of a portion of the only remaining confirmed population during the spring of 1983. It is not known who removed individuals of the thornmint or for what purpose they were removed, but, because the underlying soil was also removed, it is suspected that an attempt was made to transplant the species. The Service does not consider the designation of critical habitat, with the required publication of maps specifically indicating its location, to be prudent at this time because it could lead to further removals of thornmint plants and contribute to the taxon's continued decline.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered

Species Act include public recognition of their status, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and prohibition on taking are discussed, in part, below.

Endangered species regulations at 50 CFR 17.61 set forth a series of general prohibitions and exceptions that apply to all endangered plant species. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, ship in interstate or foreign commerce in the course of a commercial activity, or sell this subspecies, or offer it for sale in interstate or foreign commerce. It also would be illegal to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any such plant. Certain exceptions would apply to agents of the Service and State conservation agencies.

Section 9(a)(2)(b) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This new prohibition would apply to the San Mateo thornmint if it were to be found in an area under Federal jurisdiction or if the area in which it is now found were to come under Federal jurisdiction.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances. Regulations governing permits for endangered plants are at 50 CFR 17.62 and 17.63. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Requests for copies of the regulations applying to endangered plants and

inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

If this proposal is published as a final rule, section 7(a)(2) of the Act would require Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the San Mateo thornmint. Provisions for interagency cooperation are codified at 50 CFR Part 402.

Section 7(a)(4) of the Act requires Federal agencies to informally confer with the Secretary on any action likely to jeopardize the continued existence of any species proposed to be listed under section 4 of the Act, including the San Mateo thornmint.

#### Public Comments Solicited

The Service intends that any rules finally adopted be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the San Mateo thornmint;

(2) The location of and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided for by section 4 of the Act; and

(3) Additional information concerning the range and distribution of the San Mateo thornmint.

Final promulgation of the regulation on the San Mateo thornmint will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if one is requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Service's Regional Director (see **ADDRESSES** above).

#### National Environmental Policy Act

In accordance with a recommendation from the Council on Environmental Quality (CEQ), the Service has not prepared any NEPA documentation for this proposed rule. The recommendation from CEQ was based, in part, upon a decision by the U.S. Court of Appeals for the Sixth Circuit, which held that the preparation of NEPA documentation was not required as a matter of law for listings under the Endangered Species Act. *Pacific Legal Foundation v. Andrus*, 657 F.2d 829 (6th Cir., 1981).

#### References

- Abrams, L. 1951. Illustrated Flora of the Pacific States. Vol. III. Stanford University Press, Palo Alto.
- Jepson, W.L. 1939. A Flora of California. Vol. III. Jepson Herbarium and Library, University of California, Berkeley.
- Sommers, S. 1979. A brief look at the natural history of Edgewood. 3 p. unpubl. rept.
- Lindenmeyer, T.H. 1980. Field notes for *Acathomintha obovata* ssp. *duttonii*. Environmental Science Associates, Inc., San Francisco. 7 p. unpubl. rept.

#### Author

The author of this rule is Monty Knudsen, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, 1230 "N" Street, 14th Floor, Sacramento, California 95814 (916/440-2791).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

#### PART 17—[AMENDED]

1. The authority citation for Part 17 reads as follows:

**Authority:** Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding, in alphabetical order by family, genus, and species, the following to the List of Endangered and Threatened Plants;

## § 17.12 [Amended]

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Lamiaceae—Mint family:						
<i>Acanthomintha obovata</i> ssp. <i>duroii</i>	San Mateo thormmint	U.S.A. (CA)	E		NA	NA

Dated: May 30, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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